

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 881 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURENDRANAGAR JOINT NAGARPALIKA

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR SK BUKHARI for Petitioner

MR HL JANI for Respondent No. 1

MR AM MITHANI for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, Surendranagar Joint Nagarpalika, through its chief officer, filed this petition before this Court under Article 226 of the Constitution and prayed that the order annexure 'Z-6' dated 7.4.81 of the Collector of Surendranagar, be quashed and set aside.

2. Under the order annexure 'Z-6', dated 7.4.81, the petitioner has been informed that the land in question is ordered to be sold to Bharat Tramway Company, on payment of Rs.20,816.50 towards the price of the said land. The petitioner has come up with the case that the land in dispute was decided to be allotted to it and as such, the sale of land to the respondent No.2-Bharat Tramway Company is illegal and arbitrary.

3. An affidavit-in-reply has been filed in the present case. From the facts stated in reply, it transpires that the State Government has taken a decision on 1.4.81 to grant the said land to the Bharat Tramway Co. and the order has been passed by the Collector only in pursuance thereof. The possession of the land has also been handed over to the aforesaid Company under the panchnama dated 8.4.81. Further, it has been stated that on 12.3.82 the Municipality has sanctioned the plans of construction to be made on the land in question. It has further been stated that the plans were sanctioned by the Municipality after entire question was examined by the then President of the Municipality and in accordance with the suggestions made by the then President of the Municipality and it was only thereafter the plans were sanctioned and permission under Section 275 of the Gujarat Municipalities Act was granted to the Company by the Chief Officer vide commencement Certificate issued by the Municipality.

4. The Rejoinder has been filed by the petitioner and aforesaid facts have not been controverted. The learned counsel for the petitioner admits that on the land in question in accordance with the sanctioned plan for construction, the respondent-Company had already put the construction. But whatever construction has been raised by the Company, is stated to be unauthorized. In further affidavit-in-rejoinder, a categorical admission has been made to the effect that, "I may point out that even though the permission was granted and construction was required to be made within a period of one year, in fact, no such construction was made within a period of one year and, therefore, the said permission to construct had lapsed". From this admission, it is clear that the petitioner sanctioned a plan submitted by the Company, meaning thereby, it has accepted the correctness of the order of the Government, allotting this land to the Company. Once the Municipality has accepted the correctness of the order, it is estopped itself from challenging the same by filing this petition under Article 226 of the Constitution. This writ petition has

been field by the petitioner on 24th November 1981 and after filing of this petition, sanction for construction has been given. This sanction granted by the petitioner to the Company itself is sufficient for dismissal for this Special Civil Application.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. Ad-interim relief granted by this Court stands vacated. No order as to costs.

.....

(sunil)